Nos. 20-543 and 20-544

In the Supreme Court of the United States

JANET L. YELLEN, SECRETARY OF THE TREASURY, PETITIONER

v.

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, ET AL.

ALASKA NATIVE VILLAGE CORPORATION ASSOCIATION, INC., ET AL., PETITIONERS

v.

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL PETITIONER

ELIZABETH B. PRELOGAR
Acting Solicitor General
Counsel of Record

BRIAN M. BOYNTON
Acting Assistant Attorney General

EDWIN S. KNEEDLER
Deputy Solicitor General

MATTHEW GUARNIERI
Assistant to the Solicitor General

MICHAEL S. RAAB
DANIEL TENNY
ADAM C. JED
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

In the Coronavirus Aid, Relief, and Economic Security or CARES Act, Congress directed the Secretary of the Treasury to disburse $8 billion of relief funds "to Tribal governments." Pub. L. No. 116-136, Div. A, Tit. V, § 5001(a), 134 Stat. 501-502 (42 U.S.C. 801(a)(2)(B)). The CARES Act defines a "Tribal government" as "the recognized governing body of an Indian Tribe," 42 U.S.C. 801(g)(5), and provides that "[t]he term 'Indian Tribe' has the meaning given that term in" the Indian Self-Determination and Education Assistance Act (ISDA), 25 U.S.C. 5301 *et seq.* 42 U.S.C. 801(g)(1). ISDA, in turn, defines "Indian tribe" to mean "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." 25 U.S.C. 5304(e) (citation omitted). The question presented is as follows:

Whether Alaska Native regional and village corporations established pursuant to the Alaska Native Claims Settlement Act are "Indian Tribe[s]" for purposes of the CARES Act, 42 U.S.C. 801(g)(1).

PARTIES TO THE PROCEEDING

In No. 20-543, petitioner (defendant-appellee below) is Janet L. Yellen in her official capacity as the Secretary of the Treasury.[*]

In No. 20-544, petitioners (intervenor defendants-appellees below) are Ahtna, Inc.; Akiachak, Ltd.; the Alaska Native Village Corporation Association; the Association of ANCSA Regional Corporation Presidents/CEOs; Calista Corp.; Kwethluk, Inc.; Napaskiak, Inc.; Sea Lion Corp.; and St. Mary's Native Corp.

Respondents (plaintiffs-appellants below) are Akiak Native Community; Aleut Community of St. Paul Island; Arctic Village Council; Asa'carsarmiut Tribe; Cheyenne River Sioux Tribe; Confederated Tribes of the Chehalis Reservation; Elk Valley Rancheria, California; Houlton Band of Maliseet Indians; Native Village of Venetie Tribal Government; Navajo Nation; Nondalton Tribal Council; Oglala Sioux Tribe; Pueblo of Picuris; Quinault Indian Nation; Rosebud Sioux Tribe; San Carlos Apache Tribe; Tulalip Tribes; and Ute Tribe of the Uintah and Ouray Indian Reservation.

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[*] Secretary Yellen was substituted as a party for her predecessor in office pursuant to Rule 35.3 of the Rules of this Court.

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OPINIONS BELOW

These consolidated cases arise from the same proceedings below. The opinion of the court of appeals (Pet. App. 1a-27a) is reported at 976 F.3d 15.[1] The opinion of the district court (Pet. App. 28a-72a) is reported

[1] All citations to the petition appendix refer to the appendix in No. 20-543.

at 471 F. Supp. 3d 1. Additional opinions of the district court granting a stay pending appeal (Pet. App. 77a-83a) and granting a preliminary injunction (Pet. App. 84a-125a) are, respectively, available at 2020 WL 3791874 and reported at 456 F. Supp. 3d 152.

JURISDICTION

The judgment of the court of appeals was entered on September 25, 2020. The petitions for writs of certiorari were granted on January 8, 2021. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 4 of the Indian Self-Determination and Education Assistance Act provides in relevant part:

> 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

25 U.S.C. 5304(e).

The Coronavirus Aid, Relief, and Economic Security or CARES Act provides in relevant part that "[t]he term 'Indian Tribe' has the meaning given that term in section 5304(e) of title 25." 42 U.S.C. 801(g)(1). Other pertinent statutory provisions are reproduced in the appendix to this brief. App., *infra*, 1a-16a.

STATEMENT

In the midst of the public-health and economic crises precipitated by COVID-19, Congress appropriated $8 billion in aid for "Tribal governments." CARES Act,

Pub. L. No. 116-136, Div. A, Tit. V, § 5001(a), 134 Stat. 501-502 (42 U.S.C. 801(a)(2)). Congress defined a "Tribal government" for these purposes as the "recognized governing body of an Indian Tribe." 42 U.S.C. 801(g)(5). And it specified that "[t]he term 'Indian Tribe' has the meaning given that term in section 5304(e) of title 25," 42 U.S.C. 801(g)(1), which is a provision of the Indian Self-Determination and Education Assistance Act (ISDA), Pub. L. No. 93-638, 88 Stat. 2203 (25 U.S.C. 5301 *et seq.*). The cross-referenced definition from ISDA expressly refers to Alaska Native regional and village corporations established pursuant to the Alaska Native Claims Settlement Act (ANCSA), Pub. L. No. 92-203, 85 Stat. 688 (43 U.S.C. 1601 *et seq.*). See 25 U.S.C. 5304(e). For nearly 45 years, the federal government has understood ISDA's definition of "Indian tribe" to include Alaska Native regional and village corporations as entities eligible to enter into ISDA contracts. The court of appeals rejected that interpretation, thereby rendering Alaska Native regional and village corporations ineligible to receive the relief payments available to Indian tribes under the CARES Act. Pet. App. 1a-27a.

A. Legal Background

1. The Alaska Native Claims Settlement Act

After Alaska became a State in 1959, the process of transferring lands to state ownership brought to the fore the long-unsettled status of aboriginal land claims. See *Sturgeon* v. *Frost*, 136 S. Ct. 1061, 1065 (2016); S. Rep. No. 925, 91st Cong., 2d Sess. 69-79 (1970) (ANCSA Senate Report). In 1971, Congress enacted ANCSA to address the "need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims." 43 U.S.C. 1601(a). Congress

sought to achieve such a settlement "in conformity with the real economic and social needs of Natives" and "with maximum participation by Natives in decisions affecting their rights and property." 43 U.S.C. 1601(b).

ANCSA "[d]epart[ed] from previous Indian land claims settlement acts" in fundamental ways. 1 *Cohen's Handbook of Federal Indian Law* § 4.07[3][a] (Nell Jessup Newton et al. eds., 2017) (*Cohen's*). Rather than transferring land or assets to any tribal governments, as was common for prior settlement acts in the lower 48 States, see *ibid.*, Congress employed a "novel and experimental approach" unique to Alaska, David S. Case & David A. Voluck, *Alaska Natives and American Laws* 179 (3d ed. 2012) (Case & Voluck). In exchange for extinguishing any native land claims and hunting rights and revoking most existing reservations, see 43 U.S.C. 1603, 1618(a), "Congress authorized the transfer of $962.5 million in state and federal funds and approximately 44 million acres of Alaska land to state-chartered private business corporations that were to be formed pursuant to the statute," *Alaska* v. *Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 524 (1998).

To establish the corporations, Congress directed the Secretary of the Interior to divide Alaska into 12 geographic regions. 43 U.S.C. 1606(a). Within each region, Congress provided for representatives of existing Native associations to "incorporate under the laws of Alaska a Regional Corporation to conduct business for profit." 43 U.S.C. 1606(d). Congress also directed the Secretary to prepare a roll of all living Alaska Natives showing the region and, if applicable, village in which they resided. 43 U.S.C. 1604(a) and (b). Alaska Natives received stock in the Alaska Native regional corporation for the region in which they resided. 43 U.S.C.

1606(g)(1)(A). Alaska Natives who resided in villages also received stock in newly formed Alaska Native village corporations, which were established pursuant to ANCSA for approximately 200 Native villages. See 43 U.S.C. 1607, 1610(b). For Alaska Natives who resided outside the State, ANCSA authorized the creation of a thirteenth regional corporation and a similar stock distribution. 43 U.S.C. 1604(c), 1606(c).

These newly created Alaska Native regional and village corporations (ANCs) were the primary vehicles for Congress to deliver the benefits of the land claims settlement to Alaska Natives. In general, each village corporation was entitled to select a certain acreage of public lands, withdrawn for that purpose, in the vicinity of the village; the village corporation received a patent to the surface estate in the lands selected, while the regional corporation received a patent to the subsurface (mineral) estate. See 43 U.S.C. 1610(a), 1611(a), 1613(a) and (f). The regional corporations also were entitled to select additional lands. 43 U.S.C. 1611(c); see Case & Voluck 171-173 (describing complex series of additional land allocations to both regional and village corporations). In addition, ANCSA created a $962.5 million fund to be distributed to the regional corporations and then redistributed in part by them to the village corporations. Case & Voluck 175; see 43 U.S.C. 1605(c), 1606(j).

The conference committee report accompanying ANCSA described the corporations as part of "a policy of self-determination on the part of the Alaska Native people" and anticipated that the ANCs would use their resources in part to perform "social welfare functions" of regional benefit to Alaska Natives. S. Conf. Rep. No. 581, 92d Cong., 1st Sess. 37, 42 (1971) (ANCSA Conf. Report); see H.R. Rep. No. 523, 92d Cong., 1st Sess. 6

(1971) (ANCSA House Report) (ANC funds may be used "to improve the health, education, and welfare of the Natives of the region"). Congress later amended ANCSA and "expressly * * * confirmed" the authority of each ANC to provide benefits to its Native shareholders and their Alaska Native family members "to promote the health, education, or welfare of such shareholders or family members." ANCSA Land Bank Protection Act of 1998, Pub. L. No. 105-333, § 12, 112 Stat. 3135 (43 U.S.C. 1606(r)); see 144 Cong. Rec. 26,253-26,254 (1998) (statement of Sen. Murkowski) (observing that the 1998 amendment "confirm[ed] the original intent of ANCSA," and noting that ANCs may provide "scholarships, cultural activities, shareholder employment opportunities and related financial assistance, funeral benefits, meals for the elderly and other elders benefits including cash payments, and medical programs").

ANCSA originally contemplated that shares in the ANCs would be inalienable by their initial Alaska Native shareholders for 20 years and then would be freely transferrable, including to persons other than Alaska Natives. ANCSA § 7(h)(1) and (3), 85 Stat. 692-693; see § 8(c), 85 Stat. 694. The statute was later amended to extend the alienability restrictions indefinitely unless an ANC opts out of them. 43 U.S.C. 1629c.

2. The Indian Self-Determination and Education Assistance Act

Congress enacted ISDA in 1975, in response to President Nixon's calls for a "new national policy toward the Indian people" encouraging Indian "autonomy" and "control." H.R. Doc. No. 363, 91st Cong., 2d Sess. 3 (1970). ISDA authorizes "any Indian tribe" to request that the relevant federal agency enter into a contract

with a "tribal organization" to deliver federally funded economic, infrastructure, health, or education services to Indians. 25 U.S.C. 5321(a)(1). Under ISDA, a "tribal organization" includes "the recognized governing body of any Indian tribe," 25 U.S.C. 5304(*l*), and "Indian tribe" means

> any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

25 U.S.C. 5304(e). In this case, the lower courts referred to the final clause beginning with "which is recognized as eligible" as the "recognition" or "eligibility" clause. Pet. App. 11a, 41a.

In 1976, the Assistant Solicitor for Indian Affairs in the Department of the Interior issued a memorandum addressing whether ANCs qualify as "Indian tribes" under the ISDA definition quoted above. J.A. 44-48. The question arose because of the recognition clause in the definition: "which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." 25 U.S.C. 5304(e). The Assistant Solicitor noted that, although "Alaska Native * * * regional or village corporation[s] * * * established pursuant to" ANCSA are expressly included in the ISDA definition, *ibid.*, "profit-making regional and village corporations have not heretofore been recognized as eligible for [Bureau of Indian Affairs (BIA)] programs and services which are not provided for by the terms of [ANCSA]," J.A. 45. The

Assistant Solicitor explained that if that qualifying clause in the ISDA definition of "Indian tribe" were to "operate[] to disqualify [ANCs] from the benefits of" ISDA, then "their very mention" in the definition would be "superfluous." *Ibid.* Rejecting that interpretation, he concluded that the clause was not intended to "apply to regional and village corporations," which are therefore eligible to be treated as Indian tribes "within the scope" of ISDA's definition. *Ibid.*

Since the 1976 memorandum, the Department of the Interior—the "agency in charge of Indian affairs," Pet. App. 58a—has consistently adhered to the view that ANCs qualify to be treated as Indian tribes under the ISDA definition. *Ibid.* The Indian Health Service (IHS), which is part of the Department of Health and Human Services (HHS) and which also administers ISDA, adopted that interpretation in 1977. See *Cook Inlet Native Ass'n* v. *Bowen*, 810 F.2d 1471, 1474 (9th Cir. 1987); see also *id.* at 1473-1476 (agreeing with that view and holding that an ANC is an "Indian tribe" under the ISDA definition). Congress has since reenacted the ISDA definition of "Indian tribe" without material change. See pp. 30-37, *infra*.

3. The CARES Act

In the spring of 2020, the COVID-19 pandemic created a "public health emergency and economic crisis" throughout the United States. H.R. Rep. No. 420, 116th Cong., 2d Sess. 2-3 (2020). Congress enacted the CARES Act to address those twin catastrophes—in part by appropriating $150 billion to a coronavirus relief fund for "States, Tribal governments, and units of local government." 42 U.S.C. 801(a)(1). Of those funds, Congress directed the Secretary of the Treasury to reserve $8 billion specifically "for making payments to Tribal

governments." 42 U.S.C. 801(a)(2)(B). The CARES Act defines the term "Tribal government" to mean "the recognized governing body of an Indian Tribe," 42 U.S.C. 801(g)(5), and states that "[t]he term 'Indian Tribe' has the meaning given that term in section 5304(e) of title 25," *i.e.*, in ISDA. 42 U.S.C. 801(g)(1).

The CARES Act, as amended, specifies that those funds shall be used to cover the costs of "necessary expenditures incurred" due to COVID-19 that were not "accounted for" in prior budgets and that are "incurred" between March 1, 2020, and December 31, 2021. 42 U.S.C. 801(d)(1)-(3). The Treasury Department has interpreted the term "necessary expenditures" to include "[e]xpenses associated with the provision of economic support" to private businesses "in connection with the COVID-19 public health emergency." 86 Fed. Reg. 4182, 4184 (Jan. 15, 2021). Similarly, tribal recipients may use the funds to support tribal businesses. See U.S. Dep't of the Treasury, *Coronavirus Relief Fund Allocations to Tribal Governments* 1 (June 17, 2020), https://go.usa.gov/xsCkK. A state, local, or tribal recipient may also use the funds to provide social services in response to the pandemic. 86 Fed. Reg. at 4184. Relief funds that are not spent on permissible purposes may be recouped by the federal government. 42 U.S.C. 801(f)(2).

B. The Present Controversy

1. The present controversy arose from the efforts by three separate groups of Indian tribes—respondents here—to prevent the Secretary of the Treasury from making payments to ANCs under the CARES Act. Between April 17 and April 23, 2020, those tribes filed suits against the Secretary in the United States District Court for the District of Columbia, contending that

ANCs are not eligible to receive any of the funds reserved for Indian tribes. Pet. App. 7a; see *id.* at 33a, 40a-41a. Some plaintiffs did not dispute that ANCs are "Indian tribes" under the ISDA definition, and instead argued that the CARES Act separately excludes them. See *id.* at 41a-44a. Others contended that ANCs are excluded from the ISDA definition of "Indian tribe." *Ibid.*

On April 23, 2020, the Treasury Department "determine[d] that Alaska Native regional and village corporations" established pursuant to ANCSA "are eligible to receive payments from the Coronavirus Relief Fund" established by the CARES Act. J.A. 53-54. That determination accorded with the views of the Department of the Interior on ANC eligibility. J.A. 49; cf. 42 U.S.C. 801(c)(7). The Interior Department had "confirm[ed]" its position that ANCs "are 'Indian tribes' for the specific purpose of [ISDA] eligibility," J.A. 49-50, and had concluded that ANCs are eligible to receive the CARES Act funds at issue. J.A. 50-52.

The district court ultimately consolidated the three pending challenges. Pet. App. 7a. A group of ANCs, the petitioners in No. 20-544, intervened as defendants. *Id.* at 36a.

2. Initially, on April 27, 2020, the district court granted respondents' request for a preliminary injunction, forbidding Treasury "from disbursing * * * funds to any ANC." Pet. App. 86a; see *id.* at 84a-125a. But on June 26, after additional briefing and argument, the court reconsidered its earlier view, dissolved the preliminary injunction, and entered summary judgment for the Secretary and the intervenor ANCs. *Id.* at 28a-72a.

The district court framed the ISDA question as primarily a contest between two competing "canon[s] of statutory construction." Pet. App. 44a. On the one

hand, respondents invoked the "series-qualifier canon," under which "'a modifier at the end of [a] list'" of parallel nouns or verbs "'normally applies to the entire series.'" *Id.* at 44a-45a (citation omitted). Respondents argued that the recognition clause in the ISDA definition of "Indian tribe" modifies each item in the preceding list, including Alaska Native regional and village corporations. On the other hand, the Secretary invoked the canon against surplusage, arguing that respondents' reading would render the inclusion of ANCs and other ANC-specific language in the definition superfluous. *Id.* at 45a-46a.

The district court agreed with the Secretary, concluding that respondents' reading would improperly "render Congress's purposeful inclusion of ANCs in the [ISDA] definition 'wholly superfluous,'" Pet. App. 47a (quoting *Duncan* v. *Walker*, 533 U.S. 167, 174 (2001)), because ANCs have never been formally recognized for purposes of government-to-government relations under principles of federal recognition, *id.* at 47a-50a. The court also determined that ISDA's "drafting history lends support to this conclusion," because "Congress went out of its way to add ANCs to the statutory definition of 'Indian tribe'" and specifically added language identifying ANCs as "'established pursuant to'" ANCSA, *i.e.*, as corporations specially established under federal law. *Id.* at 53a. "It would be an odd result," the court reasoned, "for Congress to include ANCs in one breath only to negate their inclusion in the very next breath through the eligibility clause." *Id.* at 53a-54a. Finally, the court invoked principles of *Skidmore* deference and emphasized that the Interior Department "has long taken the position that ANCs qualify as

'Indian Tribes' for purposes of" ISDA. *Id.* at 57a; see *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140 (1944).

The district court also rejected respondents' argument that, even if ANCs satisfy the ISDA definition, they are nonetheless ineligible to receive the disputed funds because they lack "Tribal governments" for purposes of the CARES Act. 42 U.S.C. 801(a)(1); see Pet. App. 63a-72a. The CARES Act defines a "Tribal government" to mean "the recognized governing body of an Indian Tribe." 42 U.S.C. 801(g)(5). The court observed that Congress had used "almost the exact same words" in ISDA. Pet. App. 64a; see 25 U.S.C. 5304(*l*) (defining a "tribal organization" to include "the recognized governing body of any Indian tribe"). And the court concluded that the governing body of an ANC satisfies that language in both statutes, "consistent with the longstanding view of the Department of Interior." Pet. App. 67a; see *id.* at 70a.

On July 7, 2020, the district court granted respondents' request for a stay to prevent the Secretary from disbursing the disputed funds to ANCs. Pet. App. 77a-83a. The court of appeals later entered a similar injunction pending appeal. *Id.* at 75a-76a.

3. The court of appeals reversed. Pet. App. 1a-27a. As relevant here, the court held that "ANCs do not satisfy the ISDA definition" of "Indian tribe" and therefore are not eligible to receive CARES Act payments. *Id.* at 11a. In the court's view, the "text and structure" of the ISDA definition "make clear that the recognition clause, which is adjectival, modifies all of the nouns listed in the clauses that precede it." *Id.* at 11a-12a. The court reasoned that the recognition clause follows a list of "five synonyms in a grammatically simple list (any 'tribe, band, nation, or other organized group or community')." *Id.* at 12a. The court further reasoned that,

through "its usage of 'including,'" the statute "equate[s]" ANCs "with the five preceding nouns," making them all subject to the recognition clause. *Ibid.*

Having determined that the recognition clause applies to ANCs, the court of appeals then interpreted the clause to impose a condition for eligibility that, it acknowledged, "no ANC satisfies" or has ever satisfied. Pet. App. 13a. Specifically, the court interpreted the clause to refer to recognition as a "legal term of art" in Indian law. *Ibid.* (citation omitted). The court explained that, in that sense, recognition refers to a "formal political act confirming [a] tribe's existence as a distinct political society, and institutionalizing [a] government-to-government relationship between the tribe and the federal government." *Ibid.* (citation omitted). Federal recognition in that term-of-art sense is a "prerequisite to the receipt of various services and benefits available only to Indian tribes." *Id.* at 14a (citation omitted); see *id.* at 15a. The court determined that ANCs "have not satisfied the recognition clause," so construed, because the United States does not have a "political relationship with them government-to-government," and regulations in place since 1978 confirm that the United States will not establish such a relationship with corporations "'formed in recent times.'" *Id.* at 17a-18a (quoting 25 C.F.R. 83.4(a)).

The court of appeals nonetheless maintained that its interpretation does not render the express inclusion of ANCs in the statutory definition surplusage because, according to the court, "it was highly unsettled in 1975, when ISDA was enacted, whether Native villages or Native corporations would ultimately be recognized." Pet. App. 19a. The court noted that while "Native villages" were "previously thought to have at least argua-

ble sovereignty," ANCs were "newly-created corporations chartered under and thus subject to Alaska law." *Id.* at 20a. The court also noted that ANCSA directed benefits to ANCs and "charged the new ANCs" with performing certain functions "that would ordinarily be performed by tribal governments," thereby using the ANCs as "the vehicle" for providing benefits to the Alaska Natives whose claims were being settled. *Id.* at 20a-21a.

Finally, the court of appeals acknowledged that its interpretation of ISDA conflicted with a prior Ninth Circuit decision and with the longstanding views of the Interior Department. Pet. App. 23a-24a (declining to follow *Cook Inlet Native Ass'n*, *supra*).

Judge Henderson concurred but called the result the court of appeals reached "unfortunate" and "unintended." Pet. App. 26a. She could "think of no reason that the Congress would exclude ANCs (and thus exclude many remote and vulnerable Alaska Natives) from receiving and expending much-needed" coronavirus relief funds, and she stated that "Congress must have had reason to believe its definition would include ANCs." *Id.* at 26a-27a.[2]

SUMMARY OF ARGUMENT

The court of appeals erred in concluding that Alaska Native regional and village corporations (ANCs) established pursuant to the Alaska Native Claims Settlement

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[2] The court of appeals issued its decision on September 25, 2020. Pet. App. 1a. On September 30—the last day of the government fiscal year for which the funds at issue had been appropriated, see 42 U.S.C. 801(a)(1)—the court ordered that "any expiration of the appropriation for Tribal governments set forth in 42 U.S.C. 801(a)(2)(B) is hereby suspended." Pet. App. 74a. That order will remain in effect pending this Court's disposition of the case. *Ibid.*

Act are ineligible to be treated as "Indian tribe[s]" under the definition of that term in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 5304(e), which Congress incorporated into the CARES Act.

A. Congress deliberately included ANCs in the ISDA definition of "Indian tribe." The statutory text refers specifically to Alaska Native regional and village corporations established pursuant to ANCSA. Congress's decision to treat ANCs as Indian tribes is consistent with the purposes of ISDA, including promoting economic development and maximizing Indian participation in the delivery of federal services to Indian communities. The drafting history of ISDA confirms that ANCs were specifically included in the statutory definition in order to make them eligible to be treated as tribes.

The Department of the Interior and the Indian Health Service—the agencies charged with administering ISDA—have consistently interpreted ISDA's definition of "Indian tribe" to mean that ANCs are eligible to be treated as tribes. The Ninth Circuit adopted the same interpretation in a 1987 decision. Expert commentators have also long espoused that view.

Congress ratified that settled administrative and judicial interpretation of the ISDA definition by reenacting the definition without material change in 1988 and, more broadly, by making numerous changes to other ISDA definitions while leaving the definition of "Indian tribe" undisturbed. When Congress later incorporated into the CARES Act the "meaning given" to the term "Indian Tribe" in ISDA, 42 U.S.C. 801(g)(1), Congress made ANCs eligible to be treated as Indian tribes for CARES Act purposes. Congress could have chosen a

definition of "Indian tribe" that excludes ANCs, but it did not.

Reading the ISDA definition so that no ANC has ever been eligible to be treated as an Indian tribe for purposes of the definition—as the court of appeals did—is inconsistent with the text of multiple federal statutes that presuppose, in the statutory text, that ANCs meet the ISDA definition. That broader *corpus juris* confirms that the ISDA definition includes ANCs.

B. The court of appeals interpreted the recognition clause in the ISDA definition of "Indian tribe" to refer to recognition as a term of art in Indian law, meaning formal acknowledgement of a government-to-government relationship between the United States and a sovereign Indian tribe. If the recognition clause is interpreted in that manner, it should not be applied to ANCs. Reading the statute to impose such a recognition requirement on ANCs would render the express inclusion of ANCs in the statutory definition a dead letter. ANCs lack any governmental authority and are ineligible to be federally recognized as sovereign Indian tribes. Congress nonetheless chose to treat them as Indian tribes for limited statutory purposes under ISDA—and, now, the CARES Act.

The court of appeals posited that its interpretation would not have rendered the inclusion of ANCs in the ISDA definition of "Indian tribe" mere surplusage when ISDA was enacted because of uncertainty at that time about whether ANCs might be federally recognized in the future. But the relevant history does not support that theory. Although some question existed about whether or which Alaska Native villages could be federally recognized as Indian tribes, no comparable

uncertainty existed about ANCs. ANCs have never met the standards for administrative recognition.

The court of appeals also erroneously viewed its interpretation as compelled by the series-qualifier canon. In this instance, however, that canon must give way to other indicia of meaning. Reading the recognition clause to refer to "recognized" as a term of art connoting the existence of government-to-government relations, and applying the clause to ANCs, would mean that Congress deliberately included ANCs in one clause of the ISDA definition only to exclude them in the very next clause. No sound principle of interpretation or rule of grammar compels that counterintuitive result.

C. Alternatively, if the recognition clause is interpreted to apply to ANCs, then Congress should be understood to have made a judgment in ISDA itself that ANCs satisfy the conditions of eligibility under that clause for ISDA purposes. Although ANCs are not federally recognized Indian tribes, they enjoy a special status and role as Native entities under ANCSA. Congress therefore "includ[ed]" them in ISDA among the entities eligible to deliver federally funded services to Alaska Natives. 25 U.S.C. 5304(e).

ARGUMENT

The court of appeals erred in concluding that Alaska Native regional and village corporations established pursuant to the Alaska Native Claims Settlement Act do not qualify as "Indian tribe[s]" within the meaning given that term in the ISDA definition, 25 U.S.C. 5304(e), which is incorporated into the CARES Act, 42 U.S.C. 801(g)(1). ISDA's definition of "Indian tribe" refers expressly to both types of corporations and recites that they were established pursuant to ANCSA—references that would be superfluous if ANCs were simultaneously excluded by

the succeeding clause at the end of the same definition. The decision below thus violates the "'cardinal principle' of interpretation that courts 'must give effect, if possible, to every clause and word of a statute.'" *Parker Drilling Mgmt. Servs., Ltd.* v. *Newton*, 139 S. Ct. 1881, 1890 (2019) (quoting *Loughrin* v. *United States*, 573 U.S. 351, 358 (2014)).

Congress deliberately added ANCs to the ISDA definition during the legislative process in order to ensure that ANCs would be eligible to enter into contracts with the federal government under ISDA for the delivery of federally funded services to Alaska Native communities. The Interior Department and IHS have understood the ISDA definition that way essentially since ISDA was enacted. In *Cook Inlet Native Ass'n* v. *Bowen*, 810 F.2d 1471, 1473-1474 (1987), the Ninth Circuit likewise determined that ANCs qualify to be treated as Indian tribes under the ISDA definition, thus settling the issue for the last 30 years for the Circuit that encompasses Alaska. Against that settled understanding, Congress later reenacted the ISDA definition without suggesting any disagreement with the prevailing administrative and judicial interpretation. Congress has also incorporated or substantially copied the ISDA definition into other federal laws—including laws under which ANCs have been awarded grants and laws that presuppose, in the statutory text, that ANCs are treated as Indian tribes for purposes of the ISDA definition. Thus, when Congress incorporated the meaning given "Indian tribe" in the ISDA definition into the CARES Act in 2020, it did so against an established understanding that ANCs are eligible to be treated as Indian tribes under that definition. The court of appeals erred in concluding otherwise.

Alternatively, if the recognition clause is read to apply to ANCs, then Congress should be understood to have deemed ANCs to satisfy it. Under that reading, the recognition clause may be understood not to refer exclusively to entities that have been recognized by the United States for government-to-government relations, but also to refer to specified entities that already have a confirmed status under an Act of Congress as eligible for special programs and benefits provided to Indians. By "including" ANCs, along with Native villages, in a special Alaska clause in the ISDA definition, 25 U.S.C. 5304(e), Congress itself made a judgment that the status and role of ANCs under ANCSA were sufficient to warrant treating them as Indian tribes for the limited and specific purposes of ISDA—and, by extension, the CARES Act.

A. ANCs Are Defined As "Indian Tribes" For Purposes Of ISDA And The CARES Act

1. Congress expressly and deliberately included ANCs in the ISDA definition

The ISDA definition of "Indian tribe" expressly includes ANCs and uses other ANC-specific language. The statute's text thus makes clear that ANCs are eligible to be treated as "Indian tribes" for ISDA purposes. The inclusion of ANCs is consistent with ISDA's purpose of promoting the economic development of Native communities and providing services that are responsive to local needs. ISDA's drafting history further confirms that Congress intentionally added ANCs to the ISDA definition so that they would be eligible to enter into contracts under the statute.

a. The ISDA definition of "Indian tribe" includes Alaska Native regional and village corporations, along with Alaska Native villages, in a special Alaska clause:

> 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including *any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act* (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

25 U.S.C. 5304(e) (emphasis added). The ISDA definition also uses ANC-specific language. Of the listed entities, only ANCs are "established pursuant to" ANCSA. *Ibid.* ANCSA directed the establishment of regional and village corporations, to be organized under state law but governed in part by federal law. See 43 U.S.C. 1606(d), 1607(a) (establishment). Alaska Native villages, by contrast, are "defined in" ANCSA, but they preceded ANCSA and were not "established pursuant to" it. 25 U.S.C. 5304(e); see 43 U.S.C. 1602(c) (defining "Native village"). The express inclusion of ANCs and the further text reflecting their special status under ANCSA underscore that the ISDA definition should be read to include, rather than exclude, them.

Congress's decision to include ANCs in the ISDA definition, and thereby make them eligible to be treated as Indian tribes for purposes of ISDA contracting, is consistent with the nature and role of ANCs under ANCSA. As the court of appeals observed, ANCs served as the "vehicle" that Congress chose to employ, in the unique circumstances of Alaska, to deliver to Alaska Natives the benefits of the land-claim settlement embodied in ANCSA. Pet. App. 20a. In exchange for

extinguishing all aboriginal title claims in Alaska, 43 U.S.C. 1603, Congress directed the establishment of the ANCs, created a process for them to select lands, and directed substantial settlement funds to them. ANCs thus occupy a role under ANCSA comparable in that respect to the role played by tribal governments under other settlement acts. See pp. 3-6, *supra*. Moreover, Congress contemplated from the outset that ANCs would perform some "social welfare functions" of regional benefit. ANCSA Conf. Report 42; see 43 U.S.C. 1606(r) ("confirm[ing]" the authority of ANCs to "promote the health, education, or welfare" of Alaska Native shareholders and their families). ANCSA directs village corporations to manage land "on behalf of [the] Native village[s]," 43 U.S.C. 1602(j), and anticipates that regional corporations would engage in "joint ventures * * * that will benefit the region generally," 43 U.S.C. 1606(*l*).

Congress's decision in ISDA to include ANCs, controlled by Alaska Natives, is also consistent with ISDA's stated goals of achieving "maximum Indian participation in the direction of * * * Federal services to Indian communities" and of making "such services more responsive to the needs and desires of those communities." *Salazar* v. *Ramah Navajo Chapter*, 567 U.S. 182, 185-186 (2012) (quoting 25 U.S.C. 5302(a)). To exclude ANCs from ISDA contracting would have been to exclude hundreds of Alaska Native entities that Congress itself had only recently established in ANCSA to benefit Alaska Natives. Indeed, shortly after Congress enacted ISDA, experts opined that ANCs "might well be the form or organization best suited to sponsor certain kinds of federally funded programs" in Alaska. 1 American Indian Policy Review Comm'n, 95th Cong., 1st Sess., *Final Report* 495 (Comm. Print 1977) (AIPRC Report).

ISDA also reflects a concern for promoting "economic development" in Indian communities. *Washington* v. *Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 155 (1980). The inclusion of ANCs furthered that goal as well. ANCs were themselves designed to address the "economic * * * needs" of Alaska Natives, 43 U.S.C. 1601(b), and were expected to "become an important element in the economic development of the natives in Alaska," ANCSA House Report 19 (discussing a predecessor corporate model); see ANCSA Senate Report 90 (describing economic development goals and stating that the "basic purpose" of ANCSA was "to give the Alaska Native[] people the tools for making their own decisions"). Congress therefore unsurprisingly "includ[ed]" ANCs among the entities eligible to enter into contracts with the federal government to deliver federally funded services to Indians. 25 U.S.C. 5304(e).

b. The drafting history of ISDA confirms that Congress included the express reference to ANCs in order to ensure that ANCs are eligible to contract with the federal government under ISDA. As reported in the Senate, the bill that became ISDA included "Alaska Native village[s]" in the definition of "Indian tribe," but not ANCs. S. 1017, 93d Cong., 2d Sess. § 4(b), at 29-30 (Mar. 28, 1974) ("'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in [ANCSA], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.") (emphasis omitted). ANCs were added to the definition eight months later, when the House Committee on Interior and Insular Affairs reported the bill in the House of Representatives.

S. 1017, 93d Cong., 2d Sess. § 4(b), at 18 (Dec. 16, 1974) ("including any Alaska Native village *or regional or village corporation* as defined in *or established pursuant to* [ANCSA]") (emphasis altered). The accompanying committee report states that the definition as "amended" would "include regional and village corporations," with no suggestion that ANCs would be excluded by the recognition clause. H.R. Rep. No. 1600, 93d Cong., 2d Sess. 14 (1974); cf. *Indian Self-Determination and Education Assistance Act: Hearings Before the Subcomm. on Indian Affairs of the House Comm. on Interior and Insular Affairs*, 93d Cong., 2d Sess. 118 (1974) (discussion of whether to "include those regional corporations").

As the district court explained, "[t]hat Congress went out of its way to add ANCs to the statutory definition of 'Indian tribe' is compelling evidence that Congress intended ANCs to meet that definition." Pet. App. 53a. Indeed, Congress also went out of its way to add language identifying ANCs as "established pursuant to the Alaska Native Claims Settlement Act." S. 1017, 93d Cong., 2d Sess. § 4(b), at 18 (Dec. 16, 1974). That language underscores that, when crafting the bill to include ANCs, legislators fully understood that ANCs were not sovereign Indian tribes in a political sense, but rather corporate entities established pursuant to a then-recent federal law. Legislators nonetheless deliberately altered the text of the bill to make ANCs eligible to be treated as Indian tribes for limited statutory purposes under ISDA.

2. The ISDA definition has long been understood to mean that ANCs are eligible to be treated as Indian tribes under ISDA

Consistent with its plain text, ISDA's definition of "Indian tribe" has been understood for decades to mean that ANCs are eligible to be treated as "Indian tribes" under the statute. The agencies charged with administering ISDA have consistently understood the statute that way, and the Ninth Circuit—the only court of appeals to address the matter, before the decision below—confirmed that interpretation in 1987. See *Cook Inlet Native Ass'n*, 810 F.2d at 1474. Expert commentators have also long espoused that view.

a. The Interior Department first determined in 1976—a year after ISDA's enactment—that ANCs are eligible to be treated as "Indian tribes" under the statutory definition. In a memorandum to the Commissioner of Indian Affairs, the Department's Assistant Solicitor for Indian Affairs addressed "whether village and regional corporations are within the scope of the Act." J.A. 44. He explained that, "[s]ince both regional and village corporations find express mention in the definition, customary rules of statutory construction would indicate that they should be regarded as Indian tribes for purposes of" ISDA. J.A. 45. With respect to the recognition clause, the Assistant Solicitor explained that ANCs had not previously been "recognized as eligible" for services from the BIA except for those "provided for by the terms of [ANCSA]." *Ibid.* But the recognition clause should not, he explained, be interpreted to "operate[] to disqualify [ANCs] from the benefits" of ISDA, because such an interpretation would render "their very mention in [the ISDA definition] su-

perfluous." *Ibid.* He therefore concluded that "the better view is that Congress intended the qualifying language not to apply to regional and village corporations but to pertain only to that part of the paragraph which comes before the word 'including.'" *Ibid.*

Since that time, the Interior Department has consistently "taken the position that ANCs qualify as 'Indian Tribes' for purposes of" ISDA. Pet. App. 57a (district court); see *Cook Inlet Native Ass'n*, 810 F.2d at 1474 (stating that Interior's interpretation has "remained consistent" since the 1976 memorandum and citing several BIA publications); see also, *e.g.*, 60 Fed. Reg. 9250, 9250 (Feb. 16, 1995) (describing ANCs as having been "designated as 'tribes' for the purposes of some Federal laws, primarily the Indian Self-Determination and Education Assistance Act"); 58 Fed. Reg. 54,364, 54,366 (Oct. 21, 1993) (stating that ANCs "are made eligible for Federal contracting and services by statute"); *Central Council of Tlingit & Haida Indian Tribes* v. *Chief*, 26 IBIA 159, 163 (1994) (explaining that the ISDA definition "is broader than traditional definitions of 'Indian tribe' and includes entities, notably Alaska regional and village corporations, which are not normally considered to be tribes"). The Interior Department "confirm[ed]" its longstanding interpretation that ANCs "are 'Indian tribes' for the specific purpose of [ISDA] eligibility" here, in response to an inquiry from the Treasury Department. J.A. 49-50; see Pet. App. 59a (district court's observation that respondents "have identified no point in time in [the] last four decades in which the Department of Interior has not treated ANCs as 'Indian Tribes' for purposes of [ISDA]").

IHS, which also administers ISDA, adopted the same position shortly after the statute was enacted. See

Cook Inlet Native Ass'n, 810 F.2d at 1474 (citing 1977 IHS letter). In 1981, moreover, IHS published guidelines for "tribal clearances of [ISDA] Contracts in the Alaska Area," to address the award of contracts benefiting more than one Indian tribe in Alaska. 46 Fed. Reg. 27,178, 27,178 (May 18, 1981). The agency explained that, under ISDA, a contract that would "benefit[] more than one Indian tribe" may not be awarded without "the approval of each such Indian tribe." *Ibid.* (quoting 25 U.S.C. 5304(*l*)) (emphasis omitted). IHS determined that, for purposes of that provision, the beneficiaries of ISDA contracts to deliver healthcare services are the "residents of individual villages," who receive the services. *Ibid.* IHS further determined that it would require approval at the village level, "as the smallest tribal units under the ANCSA," for any contracts benefiting village members. *Ibid.* The guidelines then set forth an order of preference for which entities the agency would recognize as the "governing body" of a given village. *Id.* at 27,179. The list of entities that IHS would recognize as governing bodies, eligible to approve an ISDA contract benefitting the village, included both "village profit corporation[s]" and "regional profit corporation[s]." *Ibid.*; cf. *Cook Inlet Native Ass'n*, 810 F.2d at 1477 (recognizing that these priorities "are consistent with the administrative interpretation of [ISDA's] definition of 'tribe'"). The BIA has adopted similar guidelines. See *Douglas Indian Ass'n* v. *Juneau Area Dir.*, 27 IBIA 292, 293 (1995).

b. The Ninth Circuit held in 1987 that ANCs are eligible to be treated as Indian tribes under the ISDA definition. *Cook Inlet Native Ass'n*, 810 F.2d at 1476. The question arose in a dispute between an Alaska Native regional corporation established pursuant to ANCSA—

Cook Inlet Region, Inc. (CIRI)—and a non-profit corporation that had been organized before ANCSA to provide healthcare programs to Alaska Natives. *Id.* at 1472-1473. After the enactment of ISDA, CIRI had initially requested that the federal government enter into ISDA agreements with the non-profit entity, as a "tribal organization" operating on CIRI's behalf. *Id.* at 1473. After CIRI formed its own non-profit entities to deliver services and requested that the federal government enter into ISDA agreements with those new organizations, the incumbent provider sued, relying on the recognition clause to argue that "CIRI is not an Indian tribe under [ISDA]." *Ibid.*

The Ninth Circuit rejected that argument. The court explained that reading the recognition clause to exclude ANCs would violate the principle that a "statute should not be interpreted to render one part inoperative," and that such a reading would "illogically construe[] the language to mandate a result in one clause, only to preclude that result in the next clause." *Cook Inlet Native Ass'n*, 810 F.2d at 1474; see *id.* at 1476 ("[T]he plain language of the statute allows business corporations created under the Settlement Act to be recognized as tribes."). The court instead adopted the prevailing administrative interpretation, which it viewed as firmly grounded in "customary rules of construction." *Id.* at 1474. The court also concluded that the drafting history of ISDA supports the agencies' interpretation, *id.* at 1475, and that treating ANCs as Indian tribes for ISDA purposes is consistent with the "policies and purposes of the Self-Determination Act" because ANCs were themselves established "to provide maximum participation by Natives in decisions affecting their rights and property," *id.* at 1476 (citing 43 U.S.C. 1601).

c. Experts in the field have also long understood ISDA's definition of "Indian tribe" to include ANCs. Shortly after ISDA was enacted, a federal commission's comprehensive review of Indian-federal relations, ordered by Congress, observed that ANCs meet "the definition of 'Indian tribe' used in" ISDA. AIPRC Report 495; see *id.* at 3 (describing commission's work); Act of Jan. 2, 1975, Pub. L. No. 93-580, 88 Stat. 1910-1911 (establishing commission); see also American Indian Policy Review Comm'n, 94th Cong., 2d Sess., *Special Joint Task Force Report on Alaskan Native Issues* 24 (Comm. Print 1976) (stating that the ISDA definition "[a]s applied to Alaska * * * would appear to include * * * 210 Native village corporations; and * * * 12 regional corporations"). The leading treatise on Indian law has long explained that "regional and village corporations are included as 'tribes' under some Indian legislation," citing ISDA as a paradigmatic example. 1 *Cohen's* § 4.07[3][d][i]; accord Felix S. Cohen, *Handbook of Federal Indian Law* 769-770 & nn.264, 267 (1982 ed.) (same, although suggesting that ANCs may become ineligible in the future if they "pass[] out of Indian ownership or control"). The Case and Voluck legal treatise on Alaska Natives reflects a similar understanding. See Case & Voluck 233 ("[T]he inclusion of [ANCs] in the definition of 'Indian tribe' [in ISDA] allows such corporations to contract for services to deliver to their respective regions and villages."); cf. Troy A. Eid, *Book Review*, 30 Alaska L. Rev. 223, 223 (2013) (describing the Case and Voluck treatise as "the Alaskan equivalent of the late Felix Cohen's *Handbook*").

3. Congress incorporated the settled meaning of the ISDA definition into the CARES Act and therefore made ANCs eligible to be treated as Indian tribes

When Congress enacted the CARES Act in 2020 and incorporated the "meaning given" to the term "Indian Tribe" in ISDA, 42 U.S.C. 801(g)(1), Congress was acting against the backdrop of the consensus described above. Indeed, Congress had by then already reenacted the definition of "Indian tribe" in ISDA *itself*, without suggesting any disagreement with the prevailing understanding that ANCs are eligible to be treated as tribes under that definition. Congress incorporated that same meaning into the CARES Act.

a. Under this Court's precedent, "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change," or when it "adopts a new law incorporating sections of a prior law." *Lorillard* v. *Pons*, 434 U.S. 575, 580-581 (1978); see, *e.g.*, *Lamar, Archer & Cofrin, LLP* v. *Appling*, 138 S. Ct. 1752, 1762 (2018).

Congress has revisited ISDA numerous times since the 1970s, including by amending ISDA's other definitional provisions five times.[3] At no point did Congress indicate any disagreement with the prevailing interpretation that ISDA's definition of "Indian tribe" includes

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[3] See Indian Self-Determination Contract Reform Act of 1994, Pub. L. No. 103-413, Tit. I, § 102, 108 Stat. 4250-4260; Indian Self-Determination and Education Assistance Act Amendments of 1990, Pub. L. No. 101-644, Tit. II, § 202(1)-(2), 104 Stat. 4665; Act of May 24, 1990 (1990 Act), Pub. L. No. 101-301, § 2(a)(1)-(3), 104 Stat. 206; Act of Nov. 1, 1988, Pub. L. No. 100-581, § 208, 102 Stat. 2940; Indian Self-Determination and Education Assistance Act Amendments of 1988, Pub L. No. 100-472, § 103, 102 Stat. 2286-2287.

ANCs. Congress's decision not "to revise or repeal the [agencies'] interpretation" while making other changes "is persuasive evidence that the interpretation is the one intended by Congress." *CFTC* v. *Schor*, 478 U.S. 833, 846 (1986) (citation omitted); see, *e.g.*, *Sebelius* v. *Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 159 (2013) (upholding interpretation in light of "nearly 40 years" of agency interpretation, no judicial disagreement, and six amendments to the statute that left the relevant provision "untouched"); *Barnhart* v. *Walton*, 535 U.S. 212, 220 (2002) (observing that congressional reenactment without change of a statute frequently interpreted by an agency is "further evidence * * * that Congress intended the [a]gency's interpretation").

Moreover, in 1988, one year after the Ninth Circuit's decision in *Cook Inlet Native Ass'n*, *supra*, Congress reenacted in full ISDA's definition of "Indian tribe." See Indian Self-Determination and Education Assistance Act Amendments of 1988, Pub. L. No. 100-472, § 103, 102 Stat. 2286-2287. The 1988 enactment is the actual definition now in force. And it should be understood today as it was uniformly understood when Congress reenacted the relevant statutory text without change. See, *e.g.*, *FDIC* v. *Philadelphia Gear Corp.*, 476 U.S. 426, 436-438 (1986) (relying on congressional reenactment of statutory definition without change, against backdrop of "longstanding [agency] interpretation"); *McCaughn* v. *Hershey Chocolate Co.*, 283 U.S. 488, 492-493 (1931) (similar, where Congress reenacted the statute against the backdrop of a consistent administrative construction that had been upheld by the only court of appeals to address the question).[4]

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[4] In 1990, as part of a series of technical edits to federal Indian laws, Congress inserted a comma into the ISDA definition after the

The 1988 reenactment is particularly compelling evidence of congressional ratification because legislators were plainly aware of the significance of the definition to ANCs. An early version of the 1988 legislation, which the House passed, would have added a group of nonprofit regional associations to ISDA's definition of "Indian tribe," immediately adjacent to the ANC language. H.R. 4174, 99th Cong., 2d Sess. § 3(1), at 2 (Aug. 12, 1986). The accompanying committee report explained that the purpose of the amendment was to ensure that the associations "and the Regional Corporations shall be treated equally by the Federal agencies in their determinations to decide which entities shall be awarded contracts under" ISDA. H.R. Rep. No. 761, 99th Cong., 2d Sess. 5 (1986). Congress as a whole declined to adopt that change, but the House bill presupposes that ANCs are eligible to enter into ISDA contracts. The President of an Alaska Native regional corporation reiterated in a subsequent committee hearing that ANCs are "Indian tribe[s] as defined in the Indian Self-Determination Act." *Indian Self-Determination and Education Assistance Act, Public Law 93-638: Hearing Before the Senate Select Comm. on Indian Affairs*, 100th Cong., 1st Sess. 123 (1987) (prepared statement of Roy Huhndorf on behalf of CIRI). He testified that his corporation had "engaged in contracting with BIA and IHS for

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citation to ANCSA, thus further setting apart the recognition clause. 1990 Act § 2(a)(1), 104 Stat. 206; see S. Rep. No. 226, 101st Cong., 1st Sess. 10 (1989) (stating that the amendment "make[s] technical corrections").

nine years," *ibid.*, and he discussed the effect of a proposed amendment on future ISDA contracting by ANCs, *id.* at 124-125.[5]

Congress has also revisited ANCSA multiple times over the last several decades, including by significantly amending the statute to ensure that Alaska Natives can "continue[]" to "participat[e] in decisions affecting their rights and property." Alaska Native Claims Settlement Act Amendments of 1987, Pub. L. No. 100-241, § 2, 101 Stat. 1788-1789; see Case & Voluck 179-197 (reviewing ANCSA amendments); Gov't C.A. Br. 35 n.12 (collecting citations). Congress could have used any one of those amendments to modify the prevailing status quo if it disagreed with treating ANCs as Indian tribes for ISDA purposes. It made no such changes.

b. In the CARES Act, Congress defined the term "Indian Tribe" by incorporating "the meaning given that term in" ISDA. 42 U.S.C. 801(g)(1). Through many decades of consistent interpretation by the agencies charged with administering ISDA, as well as the Ninth Circuit's decision in *Cook Inlet Native Ass'n* and Congress's own reenactment of the definition without material change, the settled "meaning given" the term "Indian tribe" in ISDA includes ANCs. That is the meaning Congress incorporated into the CARES Act. See

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[5] Similarly, the principal sponsor of the Indian Health Care Improvement Act, Pub. L. No. 94-437, 90 Stat. 1400 (25 U.S.C. 1601 *et seq.*), which was enacted the year after ISDA, stated that the definition of "Indian tribe" in the healthcare statute had been conformed to ISDA's definition to ensure that "not just Alaska Native villages * * * but also regional and village corporations" could participate. 122 Cong. Rec. 28,343 (1976) (statement of Sen. Jackson); see 25 U.S.C. 1603(14).

Taggart v. *Lorenzen*, 139 S. Ct. 1795, 1801 (2019) (invoking the principle that "[w]hen a statutory term is 'obviously transplanted from another legal source,' it 'brings the old soil with it'") (quoting, indirectly, Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947)).

The CARES Act is not unique in that regard. For example, the Department of Housing and Urban Development (HUD) administers a block-grant program in which it awarded more than $40 million to Alaska Native corporations in the 2020 fiscal year to support affordable housing—awards that relied on a statutory definition that parallels in relevant part the ISDA definition. See 25 U.S.C. 4103(13)(B) (definition); 24 C.F.R. 1000.302, 1000.327 (program rules confirming that ANCs are eligible); HUD, *FY 2020 IHBG Final Allocation* (Feb. 2020), https://go.usa.gov/xs4gY (grant awards). The Department of Energy (DOE) likewise has relied on a definition of "Indian tribe" that incorporates the ISDA definition to award ANCs millions of dollars in energy assistance since 2010. See 25 U.S.C. 3501(4)(A) (definition); Office of Indian Energy Policy and Programs, DOE, *Tribal Energy Projects Database*, https://go.usa.gov/xs4gv (searchable database of awards).

Congress has also incorporated ISDA's definition of "Indian tribe" into numerous other statutes. Whether ANCs in particular are eligible to participate under a given statute or program based on other eligibility requirements, or whether the statute or program has any practical application to ANCs, is a separate question. For example, Congress has incorporated or copied the ISDA definition into some statutes that, through other language and context, make clear that ANCs cannot participate. See, *e.g.*, 7 U.S.C. 1639*o*(2), 1639p(a)(1) (defining

"Indian tribe" by incorporating the ISDA definition, but requiring any eligible tribal participants to exercise "regulatory authority over * * * territory of the Indian tribe," which ANCs do not); 15 U.S.C. 375(7)-(8) (incorporating ISDA definition of "Indian tribe," but limiting scope of the statute in some respects to "Indian country"). Congress has also defined "Indian tribe[s]" in terms understood to *exclude* ANCs—including, most notably, in the Federally Recognized Indian Tribe List Act of 1994 (List Act), Pub. L. No. 103-454, Tit. I, 108 Stat. 4791. See 25 U.S.C. 5130(2) ("The term 'Indian tribe' means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe."). That exclusion makes clear that ANCs are not sovereign tribes that have a government-to-government relationship with the United States.[6] Had Congress wished to make ANCs ineligible under the CARES Act, it could have incorporated such a limiting definition. Congress instead defined program eligibility for this aspect of the CARES Act in the same terms used in ISDA to include ANCs.

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[6] The List Act directs the Interior Department to publish an annual list in the Federal Register "of all Indian tribes which [Interior] recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians." 25 U.S.C. 5131(a). "The Act's purpose was to 'maintain an accurate, up-to-date list of federally recognized tribes.'" Pet. App. 116a (district court) (brackets and citation omitted). Courts have treated Interior's annual list as a definitive statement of which Indian tribes are recognized by the United States for government-to-government relations. See, *e.g.*, *Wyandot Nation of Kansas* v. *United States*, 858 F.3d 1392, 1398 (Fed. Cir. 2017).

4. Reading the ISDA definition to exclude ANCs would contradict the text of other federal statutes

The CARES Act and the ISDA definition that it incorporates should also be understood "in the context of the *corpus juris* of which they are a part." *Branch* v. *Smith*, 538 U.S. 254, 281 (2003) (opinion of Scalia, J.); see *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) ("[T]he meaning of one statute may be affected by other Acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand."). Congress has enacted a number of statutes that, in their text, presuppose that ANCs meet the ISDA definition of "Indian tribe." The court of appeals' construction of ISDA—under which no ANC has ever been eligible to be treated as an "Indian tribe"—cannot be reconciled with that broader body of Indian laws.

To start, a 1997 statute authorized certain Alaska regional health entities to form a consortium to enter into ISDA agreements for the provision of health services, "without further resolutions from the Regional Corporations, Village Corporations," or tribes that the entities represented. Department of the Interior and Related Agencies Appropriations Act, 1998 (1997 Act), Pub. L. No. 105-83, § 325(a), 111 Stat. 1597-1598. That provision presupposes that ANCs qualify as "Indian tribe[s]" from which authorizing resolutions might otherwise be required under ISDA. See 25 U.S.C. 5304(*l*). Section 325(d) of the same 1997 statute allowed CIRI (the ANC defendant in *Cook Inlet Native Ass'n*), through a designated entity, to enter into contracts or funding agreements under ISDA to provide select services at certain locations in Alaska—again, without needing to submit "any further authorizing resolutions

from any other Alaska Native Region [or] village corporation." 1997 Act § 325(d), 111 Stat. 1598-1599.[7]

At the same time, Congress limited IHS from disbursing funds "for the provision of health care services pursuant to [ISDA], with any Alaska Native village or *Alaska Native village corporation* that is located within the area served" by specified regional healthcare entities, except under "any contract or compact entered into prior to August 27, 1997." 1997 Act § 326(a) and (b), 111 Stat. 1599 (emphasis added; citation omitted). Congress also mandated a study of "contracting" by IHS under ISDA "with Alaska Native villages and *Alaska Native village corporations* for the provision of health care services" by Alaska Native regional healthcare entities. § 326(c), 111 Stat. 1599 (emphasis added). Those provisions presuppose that village corporations are eligible to enter into ISDA contracts. And Congress has continued to prohibit IHS's use of funds for ISDA contracts with ANCs in certain circumstances. See, *e.g.*, Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, Div. G, Tit. IV, § 424(a), 128 Stat. 343.

As another example, the Indian Tribal Energy Development and Self-Determination Act of 2005, Pub. L. No. 109-58, Tit. V, § 503(a), 119 Stat. 764-778, incorporates ISDA's definition of "Indian tribe" but adds that, for certain purposes, "the term 'Indian tribe' does not include any Native Corporation," 25 U.S.C. 3501(4)(A) and (B). That express carve-out would make no sense unless

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[7] The 1997 statute settled a controversy regarding an ISDA compact involving CIRI. See *Cook Inlet Treaty Tribes* v. *Shalala*, 166 F.3d 986, 989-990 (9th Cir. 1999). In dismissing that controversy as moot in light of the 1997 statute, the Ninth Circuit observed that CIRI qualified as an Indian tribe for ISDA purposes. See *id.* at 988.

ANCs otherwise qualify as "Indian tribes" under the ISDA definition.

Likewise, in 2018, Congress "establish[ed] a biomass demonstration project for federally recognized Indian tribes *and Alaska Native corporations* to promote biomass energy production." Indian Tribal Energy Development and Self-Determination Act Amendments of 2017, Pub. L. No. 115-325, § 202(a), 132 Stat. 4459 (emphasis added). To carry out that project, Congress directed the federal government to enter into agreements with "Indian tribe[s]," defined by cross-reference to the same ISDA definition at issue here. § 202(c)(1)(B) and (2), 132 Stat. 4461. Congress thus plainly understood ANCs to fall within the ISDA definition.

And when Congress enacted additional coronavirus relief legislation after the decision below, it defined the eligible grantees for a housing-assistance program to include Indian tribes as defined in 25 U.S.C. 4103, which contains language paralleling in relevant part the ISDA definition of "Indian tribe." Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Div. N, Tit. V, Subtit. A, § 501(k)(2)(C) (H.R. 133). Congress then added that, "[f]or the avoidance of doubt, the term Indian tribe shall include Alaska native corporations established pursuant to [ANCSA]." *Ibid.*

This broader *corpus juris*, including statutes that incorporate the ISDA definition, confirms that ANCs are "Indian tribes" for purposes of the CARES Act as well.

B. The Court Of Appeals Erred In Reading ANCs Out Of The ISDA Definition And The CARES Act

The court of appeals erred in construing the recognition clause at the end of ISDA's definition of "Indian tribe" to exclude ANCs. Congress did not expressly *include* ANCs in one clause of the ISDA definition only to

then categorically *exclude* them in the very next clause, by imposing a requirement of federal recognition as a sovereign tribe that ANCs could not and do not satisfy. The statutory definition should not be read to be at war with itself. If the recognition clause is read to impose a requirement of formal political recognition, then subjecting ANCs to it—and thereby excluding them from ISDA eligibility despite Congress's express inclusion of them in the definition of "Indian tribe"—would violate the rule that all terms of a statute must be given effect. *A fortiori*, Congress did not exclude ANCs when it later incorporated the ISDA definition into the CARES Act.

1. The recognition clause follows the Alaska-specific clause that "includ[es]" any Alaska Native regional or village corporation "established pursuant to" ANCSA. 25 U.S.C. 5304(e). The recognition clause then provides as follows: "which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *Ibid.* The court of appeals determined that the recognition clause refers to recognition as a legal term of art in Indian law, meaning "a 'formal political act confirming the tribe's existence as a distinct political society.'" Pet. App. 13a (citation omitted); see *id.* at 13a-16a. Recognition in that formal, political sense "permanently establishes a government-to-government relationship between the United States and the recognized tribe as a 'domestic dependent nation'" and "institutionalizes the tribe's quasi-sovereign status, along with all the powers accompanying that status such as the power to tax, and to establish a separate judiciary." 1 *Cohen's* § 3.02[3] (citations omitted).

If the recognition clause is understood in that sense, reading it to apply to ANCs would exclude them from

eligibility and would thereby violate the "'cardinal principle' of interpretation that courts 'must give effect, if possible, to every clause and word of a statute.'" *Parker Drilling*, 139 S. Ct. at 1890 (citation omitted); see, *e.g.*, *Nielsen* v. *Preap*, 139 S. Ct. 954, 969 (2019) (endorsing "the idea that 'every word and every provision is to be given effect and that none should needlessly be given an interpretation that causes it * * * to have no consequence'") (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 174 (2012) (Scalia & Garner)) (brackets omitted).

ANCs are not sovereign tribes. They have never been federally recognized for government-to-government relations with the United States. If the ISDA definition were read to mean that an ANC may contract with the federal government under ISDA only if the ANC is a federally recognized tribe, then no ANC has ever been or ever will be eligible (absent an Act of Congress)—despite many years of settled understandings to the contrary. See 59 Fed. Reg. 9280, 9284 (Feb. 25, 1994) (explaining that "[m]any Federal statutes passed since [ANCSA] have defined Indian 'tribe' to include the corporations established pursuant to ANCSA," but that those corporations "are not tribes in the historical or political sense"); 43 Fed. Reg. 39,361, 39,361-39,362 (Sept. 5, 1978) (noting that "a political relationship" is "indispensable" for federal recognition and that "corporations * * * formed in recent times" are not eligible to petition for acknowledgment under Interior's regulations); 25 C.F.R. 83.4(a), 83.11, 83.12 (similar); see also Case & Voluck 198 (explaining that ANCs are "generally subject to state law and are not federally recognized as 'tribes' *in the political sense*," even if they are "eligible as 'tribes' for certain Native American services

and programs under several statutes") (emphasis added). Reading the recognition clause to apply to and exclude ANCs from eligibility would be particularly jarring because the recognition clause follows directly after the express mention of ANCs. As the district court explained, "[i]t would be an odd result indeed for Congress to include ANCs in one breath only to negate their inclusion in the very next breath." Pet. App. 53a-54a.[8]

2. The court of appeals did not dispute that, under its interpretation, the express inclusion of ANCs in the ISDA definition is a dead letter. But it posited that its interpretation would not have violated the rule against superfluity *at the time ISDA was enacted*, stating that "it was highly unsettled in 1975 * * * whether Native villages or Native corporations would ultimately be recognized" as tribes, "even though, as things later turned out, no ANCs were recognized." Pet. App. 19a.

The court of appeals misunderstood the relevant history. The court was correct that the recognized status of

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[8] The CARES Act provides for the payment of relief funds to "Tribal governments." 42 U.S.C. 801(a)(1). Respondents contend (*e.g.*, Ute Indian Tribe Br. in Opp. 9-12) that ANCs lack a "Tribal government" and are therefore ineligible. But as the district court explained, see Pet. App. 63a-72a, the CARES Act specifically defines the term "Tribal government" using essentially the same language that appears in ISDA's definition of the term "tribal organization." Compare 25 U.S.C. 5304(*l*) ("recognized governing body of any Indian tribe"), with 42 U.S.C. 801(g)(5) ("recognized governing body of an Indian Tribe"). ANCs have long been understood to have a "recognized governing body" for ISDA purposes. Pet. App. 67a-68a. Thus, although ANCs do not exercise any sovereign authority, they nonetheless satisfy the statutory definition. See *Digital Realty Trust, Inc.* v. *Somers*, 138 S. Ct. 767, 776 (2018) ("'When a statute includes an explicit definition, we must follow that definition,' even if it varies from a term's ordinary meaning.") (citation omitted).

some Alaska Native villages was unsettled after the enactment of ANCSA. In the 1990s, the Interior Department exhaustively reviewed the history of federal dealings with Alaska Natives and concluded that the list of Native villages in ANCSA—as modified by the Secretary in accordance with the statute, see 43 U.S.C. 1610(b)—could be considered federally recognized Indian tribes. See Memorandum from Thomas L. Sansonetti, Solicitor, Dep't of the Interior, to the Secretary, *Governmental Jurisdiction of Alaska Native Villages over Land and Nonmembers* 8-46, 58-60 (Jan. 11, 1993), https://go.usa.gov/xs4DQ. And since 1993, the list of federally recognized Indian tribes published by the Interior Department has included Native villages, as defined in ANCSA and referred to in the ISDA definition of "Indian tribe." See 58 Fed. Reg. at 54,365; Pet. App. 22a; see also p. 34 & n.6, *supra* (discussing the List Act).[9]

That history concerning Native villages, however, does not suggest any uncertainty about the status of the regional and village corporations established pursuant to ANCSA. Indeed, the court of appeals identified no authority suggesting that ANCs were ever viewed at any time as potentially eligible to be federally recognized as Indian tribes in the sovereign, government-to-government sense. The 1977 report on which the court relied, see Pet. App. 20a, in fact came to the opposite conclusion, explaining that the "village and regional corporations organized pursuant to" ANCSA meet "the

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[9] Even before being included on the annual list of federally recognized tribes, Alaska Native villages were treated as eligible to enter into contracts, or to designate organizations to do so on their behalf, with the federal government under ISDA. See *Cook Inlet Native Ass'n*, 810 F.2d at 1474; 47 Fed. Reg. 53,130, 53,133-53,135 (Nov. 24, 1982); 46 Fed. Reg. at 27,179.

definition of 'Indian tribe' used in" ISDA, even though ANCs are not "repositories of tribal sovereignty." AIPRC Report 495.

The court of appeals suggested that the standards for formal federal recognition were so "unsettled" in 1975 that Congress may have viewed future federal recognition of ANCs—state-chartered corporations established pursuant to a federal statute—as a realistic possibility. Pet. App. 21a. But "perhaps the most basic principle of all Indian law, supported by a host of decisions, is that those powers lawfully vested in an Indian nation are not, in general, delegated powers granted by express acts of Congress, but rather 'inherent powers of a limited sovereignty which has never been extinguished.'" 1 *Cohen's* § 4.01[1][a] (quoting *United States* v. *Wheeler*, 435 U.S. 313, 322 (1978)); see *United States* v. *Lara*, 541 U.S. 193, 199 (2004). Thus, as the term "recognition" connotes, when the United States establishes government-to-government relations with an Indian tribe, the United States is acknowledging the sovereignty of the tribe. The regional and village corporations, by contrast, are not repositories of tribal sovereignty.

Contrary to the decision below, no real uncertainty on that point existed when ISDA was enacted or at any time thereafter. Federally recognized Indian tribes have always been understood in terms that are not applicable to ANCs. See, *e.g.*, *Cherokee Nation* v. *Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831) (tribes are "domestic dependent nations"); *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832) ("distinct, independent political communities"). Before Congress passed ISDA, common indicia of that status included, in addition to denomination as a tribe by Congress, whether "the group

has had treaty relations with the United States," whether it "has been treated as a tribe or band by other Indian tribes," and whether it "has exercised political authority over its members." Felix S. Cohen, *Handbook of Federal Indian Law* 271 (3d prtg. 1942). And administrative recognition decisions in the 1970s were based primarily on historical dealings—*i.e.*, "whether at some point in a tribe's history it established a formal political relationship with the Government of the United States." AIPRC Report 462. No ANC qualified, then or now. See 25 C.F.R. 83.11.

The court of appeals observed that ANCs were included for a time on a list of "native entities within the State of Alaska recognized and eligible to receive services from the United States Bureau of Indian Affairs." Pet. App. 22a (quoting 53 Fed. Reg. 52,829, 52,832-52,833 (Dec. 29, 1988)). But that list only underscores the court's error. The Interior Department explained at the time that ANCs were included on that list because ISDA "specifically include[d]" them. 53 Fed. Reg. at 52,833. ANCs were later removed from the list to forestall any confusion, with Interior explaining that ANCs "lack tribal status in a political sense" and had been listed previously "because of their eligibility to participate in Federal programs under specific statutes." 58 Fed. Reg. at 54,365.

3. The court of appeals also erred in viewing its interpretation as compelled by the "series-qualifier canon," which provides that a modifier that follows a "straightforward, parallel construction" of nouns or verbs in a series may be read to apply to each item in the series. Pet. App. 12a (citation omitted). To be sure, that canon supports reading the recognition clause to

apply to "any Indian tribe, band, nation, or other organized group or community," 25 U.S.C. 5304(e), and not merely the last item in that series. Cf. *Jama* v. *ICE*, 543 U.S. 335, 344 n.4 (2005). But subjecting ANCs to a federal recognition requirement "that [they] cannot meet" would render their inclusion within the definition mere "surplusage." Pet. App. 47a, 50a (district court). Given that conflict with the rule against superfluity, the series-qualifier canon cannot "bear the weight" the court placed on it here. *Lockhart* v. *United States*, 136 S. Ct. 958, 965 (2016); cf. Scalia & Garner 150 (stating that the series-qualifier canon "is highly sensitive to context," that the canon is "subject to defeasance by other canons," and that "[o]ften the sense of the matter prevails").

"[T]he words of a statute must be read in their context." *Home Depot U. S. A., Inc.* v. *Jackson*, 139 S. Ct. 1743, 1748 (2019) (citation omitted). Accordingly, the question of which items in a definition are modified by a particular clause is properly informed by context and other indicia of meaning. See *Lockhart*, 136 S. Ct. at 965-966 (considering "fundamentally contextual questions," and rejecting an interpretation that "would risk running headlong into the rule against superfluity"); *United States* v. *Hayes*, 555 U.S. 415, 425-426 (2009) (declining to apply modifier to the immediately preceding phrase where doing so would have required accepting "unlikely premises" and would have rendered a term "superfluous"). Here, the deliberate inclusion of ANCs in the statutory text, ISDA's drafting history, decades of settled practice, congressional reenactment of the statutory definition without material change, and the broader *corpus juris* all weigh against the court of appeals' interpretation. Congress did not include ANCs

in a special Alaska clause—encompassing all of the entities that Congress specified in ANCSA as necessary to address the distinct circumstances of Alaska Natives—only to then render that express inclusion a nullity by subjecting ANCs to a political recognition requirement that they cannot meet. That is especially so because ANCs were "newly-created corporations chartered under and thus subject to Alaska law." Pet. App. 20a.

Moreover, reading the ISDA definition to subject ANCs to a formal-recognition requirement would serve no purpose in this context (other than to exclude them). With respect to the other entities listed in the opening clause of the ISDA definition, a requirement of federal recognition can distinguish the groups of Indians that the federal government has acknowledged as sovereign entities from other groups of Indians that lack that status, such as groups identified as tribes only by a State. See 1 *Cohen's* § 3.03[3] (discussing federal recognition). But at the time of ISDA's enactment, ANCs had already been accorded a special status under federal law as "Native" entities, conferred directly by ANCSA. Recognition of that special status is reflected in the ISDA definition, which expressly "includ[es]" Native villages and ANCs and recites that they were "defined in or established pursuant to" ANCSA. 25 U.S.C. 5304(e). Congress therefore had no reason to impose a further recognition requirement on ANCs.

The court of appeals was similarly wrong to suggest that reading the recognition clause not to apply to ANCs would be "grammatical * * * nonsense." Pet. App. 12a. The recognition clause is a restrictive relative clause, introduced by the relative pronoun "which." Separating such a clause from its antecedent is not ungrammatical even if it may be disfavored as a stylistic matter. See

Sidney Greenbaum, *The Oxford English Grammar* 222 (1996) (examples); cf. Bryan A. Garner, *Garner's Modern English Usage* 784-786 (4th ed. 2016) (advising against "remote relatives" but calling "lapses * * * extremely common" and giving examples). And in any event, rules of grammar are "a valuable starting point" for interpretation, but they are "violated so often by so many of us that they can hardly be safely relied upon as the end point." *Payless Shoesource, Inc.* v. *Travelers Cos.*, 585 F.3d 1366, 1372 (10th Cir. 2009) (Gorsuch, J.) (interpreting a contract containing a list of terms followed by a limiting clause); cf. Scalia & Garner 140-141 (noting that "[g]rammatical usage is one of the means," but "not the exclusive means," by which "the sense of a statute is conveyed"). Here, the other textual and contextual indicia strongly favor not reading the recognition clause to apply to and exclude ANCs.

In concluding otherwise, the court of appeals relied in part on an assumption—previously endorsed by the United States in this litigation—that the recognition clause applies to Alaska Native villages. Pet. App. 12a (treating that point as "undisputed[]"). After further examination, it is the position of the United States that the statute is best read to treat Alaska Native villages and ANCs the same way for the limited purpose of ISDA eligibility. If the recognition clause does not apply to ANCs, it also does not apply to Alaska Native villages. That understanding accords with the Interior Department's 1976 memorandum, discussed above, which concluded that the recognition clause "pertain[s] only to that part of the [ISDA definition] which comes before the word 'including.'" J.A. 45; see p. 41 n.9, *supra* (explaining that Alaska Native villages were treated as eligible

to enter into ISDA contracts even before they were included on Interior's list of federally recognized tribes).

C. If The Recognition Clause Applies To ANCs, Then Congress Deemed ANCs To Satisfy It By Including Them In The ISDA Definition

Alternatively, if the recognition clause is read to apply to ANCs, then Congress must be understood to have deemed ANCs to meet the condition of eligibility stated in that clause. That alternative interpretation, like the government's interpretation above but unlike the one adopted by the court of appeals, would "give effect * * * to every clause and word" in the definition. *Parker Drilling*, 139 S. Ct. at 1890 (citation omitted).

In the lower courts, the government argued that the recognition clause uses the same language that refers to federal recognition in the term-of-art, government-to-government sense now embodied in the List Act and the list of recognized tribes maintained by the Interior Department, and that the clause should be so construed. Both the court of appeals and the district court adopted that construction. Pet. App. 13a-18a, 47a-48a. But the recognition clause can also be reasonably understood to encompass not only tribes that are eligible for benefits and services provided by the United States to Indians by virtue of their recognition as a tribe in the political, government-to-government sense, but also entities that Congress itself determined to qualify because of the special functions that it recognized they perform. Thus, although ANCs had not been recognized as generally eligible for special Indian programs and services prior to ISDA, Congress may be understood to have deemed ANCs to satisfy the eligibility condition in the recognition clause, for the specific purposes of ISDA, by virtue of their status and special role under ANCSA.

In ANCSA, Congress established ANCs and transferred lands and funds to them as part of a "settlement of all claims by Natives and Native groups of Alaska" that sought to provide for "the real economic and social needs of Natives" with "maximum participation by Natives." 43 U.S.C. 1601(a) and (b); see pp. 3-6, *supra*. When Congress later expressly "includ[ed]" ANCs in the ISDA definition and recited that they had been "established pursuant" to ANCSA, 25 U.S.C. 5304(e), Congress effectively made a judgment that ANCs had a sufficient federal status and role under ANCSA in the furnishing of benefits to Alaska Natives to be eligible to enter into ISDA contracts.

To be clear, the United States has never recognized ANCs in the sense of making them eligible for the full range of federal services and benefits available to Indian tribes recognized as sovereign entities having a government-to-government relationship with the United States. The Interior Department, as required by the List Act, now maintains a list of tribes that are federally recognized in that sense, including Alaska Native villages. See 86 Fed. Reg. 7554 (Jan. 29, 2021) (most recent list); cf. Pet. App. 14a (stating that federal recognition "is a prerequisite to the receipt of various services and benefits available only to Indian tribes") (citation omitted). ANCs have no sovereign status and are not on that list. While that statutory and regulatory structure now underlies the contemporary understanding of federal recognition, those developments do not negate Congress's determination, when it enacted ISDA, that ANCs satisfy the definition of "Indian tribe[s]" in that statute, whatever the precise meaning of the recognition clause. 25 U.S.C. 5304(e).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Acting Solicitor General
BRIAN M. BOYNTON
Acting Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
MATTHEW GUARNIERI
Assistant to the Solicitor General
MICHAEL S. RAAB
DANIEL TENNY
ADAM C. JED
Attorneys

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APPENDIX

1. 25 U.S.C. 5304(e) provides:

Definitions

For purposes of this chapter, the term—

(e) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

2. 42 U.S.C. 801 provides:

Coronavirus relief fund

(a) Appropriation

(1) In general

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for making payments to States, Tribal governments, and units of local government under this section, $150,000,000,000 for fiscal year 2020.

(2) Reservation of funds

Of the amount appropriated under paragraph (1), the Secretary shall reserve—

(A) $3,000,000,000 of such amount for making payments to the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa; and

(B) $8,000,000,000 of such amount for making payments to Tribal governments.

(b) Authority to make payments

(1) In general

Subject to paragraph (2), not later than 30 days after March 27, 2020, the Secretary shall pay each State and Tribal government, and each unit of local government that meets the condition described in paragraph (2), the amount determined for the State, Tribal government, or unit of local government, for fiscal year 2020 under subsection (c).

(2) Direct payments to units of local government

If a unit of local government of a State submits the certification required by subsection (e) for purposes of receiving a direct payment from the Secretary under the authority of this paragraph, the Secretary shall reduce the amount determined for that State by the relative unit of local government population proportion amount described in subsection (c)(5) and pay such amount directly to such unit of local government.

(c) Payment amounts

(1) In general

Subject to paragraph (2), the amount paid under this section for fiscal year 2020 to a State that is 1 of the 50 States shall be the amount equal to the relative population proportion amount determined for the State under paragraph (3) for such fiscal year.

(2) Minimum payment

(A) In general

No State that is 1 of the 50 States shall receive a payment under this section for fiscal year 2020 that is less than $1,250,000,000.

(B) Pro rata adjustments

The Secretary shall adjust on a pro rata basis the amount of the payments for each of the 50 States determined under this subsection without regard to this subparagraph to the extent necessary to comply with the requirements of subparagraph (A).

(3) Relative population proportion amount

For purposes of paragraph (1), the relative population proportion amount determined under this paragraph for a State for fiscal year 2020 is the product of—

(A) the amount appropriated under paragraph (1) of subsection (a) for fiscal year 2020 that remains after the application of paragraph (2) of that subsection; and

(B) the relative State population proportion (as defined in paragraph (4)).

(4) Relative State population proportion defined

For purposes of paragraph (3)(B), the term "relative State population proportion" means, with respect to a State, the quotient of—

(A) the population of the State; and

(B) the total population of all States (excluding the District of Columbia and territories specified in subsection (a)(2)(A)).

(5) Relative unit of local government population proportion amount

For purposes of subsection (b)(2), the term "relative unit of local government population proportion amount" means, with respect to a unit of local government and a State, the amount equal to the product of—

(A) 45 percent of the amount of the payment determined for the State under this subsection (without regard to this paragraph); and

(B) the amount equal to the quotient of—

(i) the population of the unit of local government; and

(ii) the total population of the State in which the unit of local government is located.

(6) District of Columbia and territories

The amount paid under this section for fiscal year 2020 to a State that is the District of Columbia or a territory specified in subsection (a)(2)(A) shall be the amount equal to the product of—

(A) the amount set aside under subsection (a)(2)(A) for such fiscal year; and

(B) each such District's and territory's share of the combined total population of the District of Columbia and all such territories, as determined by the Secretary.

(7) Tribal governments

From the amount set aside under subsection (a)(2)(B) for fiscal year 2020, the amount paid under this section for fiscal year 2020 to a Tribal government shall be the amount the Secretary shall determine, in consultation with the Secretary of the Interior and Indian Tribes, that is based on increased expenditures of each such Tribal government (or a tribally-owned entity of such Tribal government) relative to aggregate expenditures in fiscal year 2019 by the Tribal government (or tribally-owned entity) and determined in such manner as the Secretary determines appropriate to ensure that all amounts available under subsection (a)(2)(B) for fiscal year 2020 are distributed to Tribal governments.

(8) Data

For purposes of this subsection, the population of States and units of local governments shall be determined based on the most recent year for which data are available from the Bureau of the Census.

(d) Use of funds

A State, Tribal government, and unit of local government shall use the funds provided under a payment made under this section to cover only those costs of the State, Tribal government, or unit of local government that—

(1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);

(2) were not accounted for in the budget most recently approved as of March 27, 2020, for the State or government; and

(3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

(e) Certification

In order to receive a payment under this section, a unit of local government shall provide the Secretary with a certification signed by the Chief Executive for the unit of local government that the local government's proposed uses of the funds are consistent with subsection (d).

(f) Inspector General oversight; recoupment

(1) Oversight authority

The Inspector General of the Department of the Treasury shall conduct monitoring and oversight of the receipt, disbursement, and use of funds made available under this section.

(2) Recoupment

If the Inspector General of the Department of the Treasury determines that a State, Tribal government, or unit of local government has failed to comply with subsection (d), the amount equal to the amount of funds used in violation of such subsection shall be booked as a debt of such entity owed to the Federal Government. Amounts recovered under this subsection shall be deposited into the general fund of the Treasury.

(3) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Office of the Inspector General of the Department of the Treasury, $35,000,000 to carry out oversight and recoupment activities under this subsection. Amounts appropriated under the preceding sentence shall remain available until expended.

(4) Authority of Inspector General

Nothing in this subsection shall be construed to diminish the authority of any Inspector General, including such authority as provided in the Inspector General Act of 1978 (5 U.S.C. App.).

(g) Definitions

In this section:

(1) Indian Tribe

The term "Indian Tribe" has the meaning given that term in section 5304(e) of title 25.

(2) Local government

The term "unit of local government" means a county, municipality, town, township, village, parish, borough, or other unit of general government below the State level with a population that exceeds 500,000.

(3) Secretary

The term "Secretary" means the Secretary of the Treasury.

(4) State

The term "State" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

(5) Tribal government

The term "Tribal government" means the recognized governing body of an Indian Tribe.

3. 43 U.S.C. 1601(b) provides:

Congressional findings and declaration of policy

Congress finds and declares that—

(b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a

reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska;

4. 43 U.S.C. 1606 provides in pertinent part:

Regional Corporations

(a) Division of Alaska into twelve geographic regions; common heritage and common interest of region; area of region commensurate with operations of Native association; boundary disputes, arbitration

For purposes of this chapter, the State of Alaska shall be divided by the Secretary within one year after December 18, 1971, into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the contrary, such regions shall approximate the areas covered by the operations of the following existing Native associations:

(1) Arctic Slope Native Association (Barrow, Point Hope);

(2) Bering Straits Association (Seward Peninsula, Unalakleet, Saint Lawrence Island);

(3) Northwest Alaska Native Association (Kotzebue);

(4) Association of Village Council Presidents (southwest coast, all villages in the Bethel area, including all villages on the Lower Yukon River and the Lower Kuskokwim River);

(5) Tanana Chiefs' Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokwim, Tanana River);

(6) Cook Inlet Association (Kenai, Tyonek, Eklutna, Iliamna);

(7) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula);

(8) Aleut League (Aleutian Islands, Pribilof Islands and that part of the Alaska Peninsula which is in the Aleut League);

(9) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez, and Seward);

(10) Tlingit-Haida Central Council (southeastern Alaska, including Metlakatla);

(11) Kodiak Area Native Association (all villages on and around Kodiak Island); and

(12) Copper River Native Association (Copper Center, Glennallen, Chitina, Mentasta).

Any dispute over the boundaries of a region or regions shall be resolved by a board of arbitrators consisting of one person selected by each of the Native associations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Native associations involved.

(b) Region mergers; limitation

The Secretary may, on request made within one year of December 18, 1971, by representative and responsible leaders of the Native associations listed in subsection (a), merge two or more of the twelve regions: *Provided*, That the twelve regions may not be reduced to less than seven, and there may be no fewer than seven Regional Corporations.

(c) Establishment of thirteenth region for nonresident Natives; majority vote; Regional Corporation for thirteenth region

If a majority of all eligible Natives eighteen years of age or older who are not permanent residents of Alaska elect, pursuant to section 1604(c) of this title, to be enrolled in a thirteenth region for Natives who are nonresidents of Alaska, the Secretary shall establish such a region for the benefit of the Natives who elected to be enrolled therein, and they may establish a Regional Corporation pursuant to this chapter.

(d) Incorporation; business for profit; eligibility for benefits; provisions in articles for carrying out chapter

Five incorporators within each region, named by the Native association in the region, shall incorporate under the laws of Alaska a Regional Corporation to conduct business for profit, which shall be eligible for the benefits of this chapter so long as it is organized and functions in accordance with this chapter. The articles of incorporation shall include provisions necessary to carry out the terms of this chapter.

(e) Original articles and bylaws: approval by Secretary prior to filing, submission for approval; amendments to articles: approval by Secretary; withholding approval in event of creation of inequities among Native individuals or groups

The original articles of incorporation and bylaws shall be approved by the Secretary before they are filed, and they shall be submitted for approval within eighteen months after December 18, 1971. The articles of incorporation may not be amended during the Regional Corporation's first five years without the approval of the Secretary. The Secretary may withhold approval under this section if in his judgment inequities among Native individuals or groups of Native individuals would be created.

(f) Board of directors; management; stockholders; provisions in articles or bylaws for number, term, and method of election

The management of the Regional Corporation shall be vested in a board of directors, all of whom, with the exception of the initial board, shall be stockholders over the age of eighteen. The number, terms, and method of election of members of the board of directors shall be fixed in the articles of incorporation or bylaws of the Regional Corporation.

(g) Issuance of stock

(1) Settlement Common Stock

(A) The Regional Corporation shall be authorized to issue such number of shares of Settlement Common Stock (divided into such classes as may be specified in the articles of incorporation to reflect the provisions of this chapter) as may be needed to issue

one hundred shares of stock to each Native enrolled in the region pursuant to section 1604 of this title.

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(r) Benefits for shareholders or immediate families

The authority of a Native Corporation to provide benefits to its shareholders who are Natives or descendants of Natives or to its shareholders' immediate family members who are Natives or descendants of Natives to promote the health, education, or welfare of such shareholders or family members is expressly authorized and confirmed. Eligibility for such benefits need not be based on share ownership in the Native Corporation and such benefits may be provided on a basis other than pro rata based on share ownership.

5. 43 U.S.C. 1607 provides:

Village Corporations

(a) Organization of Corporation prerequisite to receipt of patent to lands or benefits under chapter

The Native residents of each Native village entitled to receive lands and benefits under this chapter shall organize as a business for profit or nonprofit corporation under the laws of the State before the Native village may receive patent to lands or benefits under this chapter, except as otherwise provided.

(b) Regional Corporation: approval of initial articles; review and approval of amendments to articles and annual budgets; assistance in preparation of articles and other documents

The initial articles of incorporation for each Village Corporation shall be subject to the approval of the Regional Corporation for the region in which the village is located. Amendments to the articles of incorporation and the annual budgets of the Village Corporations shall, for a period of five years, be subject to review and approval by the Regional Corporation. The Regional Corporation shall assist and advise Native villages in the preparation of articles of incorporation and other documents necessary to meet the requirements of this subsection.

(c) Applicability of section 1606

The provisions of subsections (g), (h) (other than paragraph (4)), and (o) of section 1606 of this title shall apply in all respects to Village Corporations, Urban Corporations, and Group Corporations.

6. 43 U.S.C. 1629c(a)-(b) provides:

Duration of alienability restrictions

(a) General rule

Alienability restrictions shall continue until terminated in accordance with the procedures established by this section. No such termination shall take effect until after July 16, 1993: *Provided*, *however*, That this prohibition shall not apply to a Native Corporation whose board of directors approves, no later than March 1, 1992, a resolution (certified by the corporate secretary of such

corporation) electing to decline the application of such prohibition.

(b) Opt-out procedure

(1)(A) A Native Corporation may amend its articles of incorporation to terminate alienability restrictions in accordance with this subsection. Only one amendment to terminate alienability restrictions shall be considered and voted on prior to December 18, 1991. Rejection of the amendment shall not preclude consideration prior to December 18, 1991, of subsequent amendments to terminate alienability restrictions.

(B) If an amendment to terminate alienability restrictions is considered, voted on, and rejected prior to December 18, 1991, then subsequent amendments to terminate alienability restrictions after December 18, 1991, shall be considered and voted on—

(i) in the case of an amendment submitted by the board of directors of the corporation on its own motion, not earlier than five years after the rejection of the most recently rejected amendment to terminate restrictions; or

(ii) in the case of an amendment submitted by the board of directors of the corporation pursuant to a shareholder petition, not earlier than two years after the rejection of the most recently rejected amendment to terminate restrictions.

(C) If no amendment to terminate alienability restrictions is considered and voted on prior to December 18, 1991, then amendments to terminate alienability restrictions after December 18, 1991, shall be considered and voted on—

(i) in the case of an amendment submitted by the board of directors of the corporation on its own motion, not more than once every five years; or

(ii) in the case of an amendment submitted by the board of directors of the corporation pursuant to a shareholder petition, not more than once every two years.

(2) An amendment authorized by paragraph (1) shall specify the time of termination, either by establishing a date certain or by describing the specific event upon which alienability restrictions shall terminate.

(3) Dissenters rights may be granted by the corporation in connection with the rejection of an amendment to terminate alienability restrictions in accordance with section 1629d of this title. Once dissenters rights have been so granted, they shall not be granted again in connection with subsequent amendments to terminate alienability restrictions.

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